

James A. Clark, Bar No. 278372
james.clark@towerlegalgroup.com
Renee P. Ortega, Bar No. 283441
renee.parras@towerlegalgroup.com
Ariel A. Pytel, Bar No. 328917
ariel.pytel@towerlegalgroup.com
TOWER LEGAL GROUP, P.C.
11335 Gold Express Drive, Suite 105
Sacramento, California 95670
Telephone: 916.361-6609
Fax No.: 916.361.6019

A. Jacob Nalbandyan, Bar No. 272023
jnalbandyan@lntriallawyers.com
Vanoochi Torossian, Bar No. 328536
vtorossian@lntriallawyers.com
LEVIN & NALBANDYAN, LLP
811 Wilshire Blvd., Suite 800
Los Angeles, California 90017
Telephone: 213.232.4848
Fax No.: 213.232.4849

Attorneys for Plaintiff,
SCOTT SEXTON

[Additional counsel on following page]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SCOTT SEXTON,

Plaintiff,

v.

SPIRIT AIRLINES, INC., a Delaware
Corporation; and Does 1-10, inclusive,

Defendant.

Case No. 2:21-cv-00898-TLN-AC

**JOINT STIPULATION AMENDING
THE SCHEDULING ORDER AND
ORDER**

1 Nicholas McKinney, Bar No. 322792
nmckinney@littler.com
2 LITTLER MENDELSON P.C.
500 Capitol Mall, Suite 2000
3 Sacramento, California 95814
Telephone: 916.830.7200
4 Fax No.: 916.561.0828

5 Attorneys for Defendant
SPIRIT AIRLINES, INC.
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1 Plaintiff Scott Sexton (“Plaintiff”) and Defendant Spirit Airlines, Inc. (“Defendant”)
2 (collectively, the “Parties”), by and through their respective counsel of record, hereby agree and
3 respectfully stipulate as follows:

4 **WHEREAS**, Plaintiff filed his Complaint on April 12, 2021, and the matter was
5 removed to this Court on May 17, 2021;

6 **WHEREAS**, at the time of removal, counsel for Defendant were Robert Conti and
7 Kayla Cox;

8 **WHEREAS**, on May 18, 2021, this Court issued its Initial Pretrial Scheduling Order
9 (“Scheduling Order”), which requires the Parties to complete discovery no later than 240 days after
10 the last day that Defendant may answer the Complaint (which here was March 31, 2023).¹
11 Accordingly, the current discovery cut off was November 27, 2023.

12 **WHEREAS**, since the time of the filing of this matter, former defense counsel Robert
13 Conti has passed away and Kayla Cox has moved to another firm.

14 **WHEREAS**, on June 2, 2022, Counsel for Defendant, Nicholas McKinney, substituted
15 in. None of the original defense attorneys on this matter remain on the case or with the firm Littler
16 Mendelson.

17 **WHEREAS**, with the pleadings in this matter resolved, the Parties intend on mediation
18 for an early resolution of this matter.

19 **WHEREAS**, the counsel for Defendant will be on parental leave starting on or about
20 August 20, 2023 through the end of the year.

21 **WHEREAS**, good cause exists to modify the Court’s Scheduling Order as follows:

22 The district court is given broad discretion in supervising the pretrial phase of
23 litigation...” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (citation
24 and internal quotation marks omitted). “A schedule may be modified only for good cause and with
25 the judge’s consent.” Fed. R. Civ. P. 16(b)(4); see e.g. *Spiller v. Ella Smithers Geriatric Ctr.*, 919
26 F.2d 339, 343 (5th Cir. 1990) (court impliedly granted motion to modify scheduling order by
27

28 ¹ Over the last two years the Parties have been engaged in motion practice regarding the pleadings
in this matter. The date provided is the most recent date to respond to the Amended Complaint.

1 allowing summary judgment motion after pretrial motion cut-off date).

2 To establish “good cause,” parties seeking modification of a scheduling order must
 3 generally show that, even with the exercise of due diligence, they cannot meet the order’s timetable.
 4 *Johnson, supra*, 975 F.2d at 609; *see e.g., Hood v. Hartford Life & Acc. Ins. Co.*, 567 F.Supp.2d
 5 1221, 1224 (E.D. Cal. 2008) (granting request for modification that was promptly made when it
 6 became apparent that compliance with the scheduling order was not possible). In determining “good
 7 cause,” courts also consider the importance of the requested modification, the potential prejudice
 8 in allowing the modification, and, conversely, whether denial of the requested modification would
 9 result in prejudice. *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003)
 10 (involving amendment of pleadings).

11 Here, good cause exists for a modification of the Court’s Scheduling Order given the
 12 Parties’ inability to complete necessary discovery within the Scheduling Order’s timetable. This
 13 matter was initially filed on April 12, 2021, the matter was removed on May 17, 2021, and the
 14 Scheduling Order was ordered on May 18, 2021. Counsel for Defendant changed since the outset
 15 of this matter. The Parties and the court spent almost two years engaged in motion practice over the
 16 sufficiency of the pleadings. The Parties hope to negotiate an early resolution of this matter. Defense
 17 counsel will be on parental leave during the last few months, through the end, of the current
 18 discovery period, as set by the Scheduling Order.

19 **THEREFORE, upon good cause shown**, the Parties stipulate to continue the
 20 discovery cut off (and related deadlines) out by 365 days (which would be November 27, 2024 for
 21 the discovery cutoff).

22 Dated: June 13, 2023

LITTLER MENDELSON, P.C.

23 /s/ Nicholas W. McKinney

24 NICHOLAS W. MCKINNEY
 Attorneys for Defendant Spirit Airlines, Inc.

25 Dated: June 13, 2023

LEVIN & NALBANDYAN, LLP.

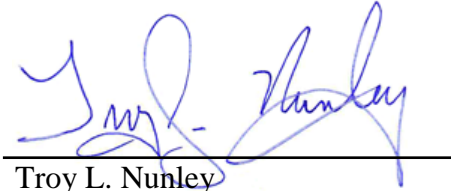
26 /s/ Vanoohi Torossian (as authorized on 6/13/23)

27 VANOOGHI TOROSSIAN
 28 Attorneys for Plaintiff SCOTT SEXTON

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June 13, 2023



Troy L. Nunley
United States District Judge